S.B. CIVIL WRIT PETITION NO.3554/98
State of Raj. & Ors. V. Board of Revenue & Ors.

Date of order : 25/7/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri B.N. Sandu, Additional Government Advocate for the State
Shri Nitin Jain for the respondents.

REPORTABLE

The State of Rajasthan has filed this writ petition challenging the judgment dated 4.7.1995 passed by the Board of Revenue and has prayed that the judgment dated 8.11.1994 passed by the Collector, Dausa be restored.

Factual matrix of the case is that one Shri Bhura S/o Shri Kishana Meena resident of Village Rugli, District Dausa khatedar of the lands of khasra no.7/1 to 7/24 measuring in all 62 bighas and 5 biswas died. One Raghunath S/o Ganga Sahai resident of village Hingota claimed

that he was in cultivatory possession of the land and therefore the same should be recorded in his name. The Tehsildar dismissed his claim vide order dated 26.12.1961 and simultaneously he also passed an order that since Bhura died without leaving any heir and therefore the case be sent to Additional Collector, Jaipur for taking necessary steps to get the said property declared as escheat. The Additional Collector passed an order on 30.9.1962 to the effect that Bhura died without leaving any legal heir and therefore the property in question was an escheat property and appropriate application be therefore made to the competent court. On such application being made under Section 6 & 9 of the Rajasthan Escheat Regulation Act, 1956 on

9th July, 1996, the learned District Judge passed the order on 20.8.1966 declaring the disputed property as escheat. While this property was declared as escheat on 20.8.1966, Gram Panchayat Joerota Khurd sanctioned mutation in favour of Smt. Shara daughter of Bhura on 26.6.1966. She thereafter transferred this land in two parts respectively in favour of respondent no.2 Chandra Bhan and respondent no.3 Vinod Bihari vide registered sale deed dated 1st March, 1968.

While the State of Rajasthan claims that the respondents approached the Board of Revenue against the order of District Judge with enormous delay in the year 1984, the private respondents insist that they were not at all aware about the

factom of property being declared escheat under the Rajasthan Escheat Regulation Act, 1956 and came to the know about the same in December, 1983 and soon thereafter in 1984. Respondent no.2 Chandra Bhan filed an application before the Board of Revenue. The Revenue Board vide its judgment dated 12.5.1993 on consideration of the arguments held that entire proceedings declaring the subject property as escheat was vitiated for the reasons that claim of Mst. Shara daughter of Late Bhura, was not examined despite noticing the report of Tehsildar that Bhura did not die without any heir and directed the Collector to examine the case afresh in the light of that report of the Tehsildar that Bhura's daughter was alive and that the land had already

been mutated in her favour prior to the order passed by the District Judge. The Board held that on these facts the land could not have been held as escheat. Before the District Collector also only respondent no.2 Chandra Bhan contested the matter. The District Collector, however, held that once when the property in dispute has been held to be escheat by order of the Court, the mutation in favour of Mst. Sahara could not be attested. The District Collector again held the property in dispute to be escheat. The respondent no.2 thereafter again approached the Board of Revenue by filing an appeal which was allowed by order dated 4th July, 1995. Hence this writ petition.

I have heard Shri B.N. Sandu, the

learned Additional Government Advocate for the appellant and Shri Nitin Jain for the respondents.

Shri B.N. Sandu, the learned Additional Government Advocate argued that a general application submitted by private respondents to the Board of Revenue could not be registered as an appeal and that the power of superintendence for the escheat property as contained in Section 3 of the Act are vested in District Collector. Though subject to the directions of the Board of Revenue and State Government, final order in this respect are to be passed by the District Collector and therefore the Board has gone beyond its jurisdiction in interfering in that order. It was argued that proceedings for escheat was held in

accordance with the provisions of the Act and the Rules. The Additional Collector started the process of declaring this property as escheat much before the mutation was entered in favour of Mst. Shara and the property absolutely vested in the State when the District Judge passed the order dated 20.8.1966 declaring it to be a escheat and Board of Revenue has thereafter no jurisdiction to interfere with the order of the District Collector. The only remedy available to the petitioner was to file civil suit for declaration of his rights. It was argued that even if the land was mutated in the name of Mst. Shara earlier in point of time that could not confer any right on her because mutation proceedings are only fiscal in nature and they do not decide

upon the rights of the parties. It was therefore prayed that the order passed by the Boadd of Revenue be set aside and that of the District Collector be restored.

On the other hand, Shri Nitin Jain, the learned counsel for the respondents opposed the writ petition and argued that Bhura S/o Kishana Meena was resident of Village Rugli in Tehsil Dausa and he died leaving behind his sole legal heir, Mst. Shara. She filed application for mutation in her favour. One Raghunath claimed to be recorded as khatedar of the land and at that stage while rejecting his claim, the Tehsildar on his own initiated the proceedings for declaring the subject land as escheat. Subsequently, Mst. Shara filed an application before Tehsildar to

get the land mutated in his name who rejected the objection of Raghunath and passed the order on 16.7.1965 and mutated the land in favour of Mst. Shara. Copy of this order has been placed on record. The Gram Panchayat on that basis entered the mutation in favour of Mst. Shara on 26.6.1966. Earlier this property was sold to respondent no.2 & 3 in two parts but subsequently respondent no.3 surrendered his interest in favour of respondent no.2 and the entire land came to be mutated in favour of respondent no.2 Chandra Bhan vide mutation order dated 23.2.1986. He is presently in lawful possession of the property.

Shri Nitin Jain also submitted that respondent no.2 Chandra Bhan had way back in the year 1984 filed a revenue suit in

the Court of SDO, Dausa against Tehsildar Dausa as well as Mst. Shara and the same was decreed in his favour vide judgment of SDO dated 18.5.1998, the copy of which has been placed on record. It was argued that property of a citizen cannot be arbitrarily declared as escheat by the State when his legal heirs are living. Mst. Shara was very much alive when Bhura died and she is alive even today. Earlier order passed by the District Collector was without notice to either Mst. Shara or to respondent no.2. Subsequently, when the Board of Revenue remanded the matter to District Collector for making enquiry, Tehsildar, Dausa in turn made a thorough enquiry before whom affidavit of Mst. Shara was produced. He also recorded statements of Sanwal Das and Govind Ram

residents of Rugli and also obtained report from the concerned Land Inspector. According to his report, it was proved that Mst. Shara was sole surviving legal heir of Bhura at the time of his death. On consideration of these facts, the Board of Revenue has allowed the appeal of the respondents and remanded the matter. It was therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

Examining at the outset, the argument advanced by learned Additional Government Advocate that only Collector could exercise the power of superintendence for escheat property and not the Board of

Revenue as per Section 3 of the Act, this argument merits outright rejection because Section 7 of the Act provides for a remedy of appeal before the Board of Revenue. The Board of Revenue was earlier approached and it was pointed out that in spite of contrary report of Tehsildar and mutation recorded in favour of Mst. Shara earlier in point of time, the proceedings for declaring the subject property as escheat were separately taken and on which no notice was served to Mst. Sara. It was also canvassed before the Board that learned District Judge passed the order in ignorance of the separate proceedings of mutation already entered in the name of Mst. Shara. The learned Board of Revenue in those circumstances remanded the matter to District Collector

with a pointed reference to the facts that the enquiry be made whether Bhura died leaving Mst. Shara as his legal heir. The District Collector entrusted the enquiry to Tehsildar. Tehsildar examined the statements of residents of Village as also the affidavit of Mst. Shara. He also obtained a report from the Land Revenue Inspector. In these circumstances, the Collector was required to have taken a decision on his own on the basis of material available on record. The approach taken by the Collector that once the property has been declared as escheat by order of the District Judge, without challenging that order and without getting the same set aside, claim of Mst. Shara over land in dispute could not be accepted. So far as

the earlier order of the Additional Collector passed on 30.9.1962 is concerned, that was only intended to initiate the proceedings for escheat but the property was actually declared escheat only by the order of the District Collector dated 20.8.1966. When this date is compared with the date on which the mutation was opened, it is found that mutation was attested on 26.6.1966, i.e. exactly two months therebefore. It cannot be therefore said that the mutation has been recorded in favour of Mst. Shara later in point of time than the declaration of the property as escheat. This reasoning also cannot be appreciated because the respondent have indeed challenged the declaration of the said property as escheat made by the District

Judge by filing appeal before the Board of Revenue under the provisions of Section 7. Insistence by the learned Collector that it could be done only when the challenge to the order declaring the land was made also stands satisfied. Appeal before the Board of Revenue being the remedy of first appeal, the Board in accordance with the provisions of Section 7 of the Escheat Act could also examine whether the findings recorded by the District Collector were supported by material on record and sustainable on evidence and if the Board on appreciation of the evidence has found that the Collector has recorded findings contrary to the weight of evidence on record, he cannot be said to have exceeded his jurisdiction.

Their Lordships of Hon'ble Supreme Court in State of Bihar Vs. Radha Kishna Singh & Ors., (1983) 3 SCC 118 in para 272 of the report held that when the Government put forwards a claim of escheat, a heavy onus lies on it to prove the absence of any heir of the deceased anywhere in the world and normally court frowns on the escheat being taken by the State unless the essential conditions for escheat are fully and completely satisfied. It would be best to extract the relevant para for the facility of reference:

> 'It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court

frowns on the estate being taken by escheat unless the essential conditions for esheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the plaintiffs-respondents. Even if they succeed in showing that the plantiffs were not the nearest reversioners of late Maharaja, it does not follow as a logical corollary that the failure of the plaintiffs' claim would lead to the irresistible inference that there is no other

heir who could at any time come forward to claim the properties.'

In my considered view, the order passed by the learned Board of Revenue does not suffer from any error apparent on the face of the record so as to warrant interference by this Court.

In view of what has been discussed above, the writ petition is found devoid of any merits and the same is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

RS/-